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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/472,300	12/27/99	SHATTIL	S 0886285913

STEVE SHATTIL  
4980 MEREDITH WAY 201  
BOULDER CO 80303

WM01/0201

EXAMINER

BANKS HAROLD, M

ART UNIT

PAPER NUMBER

2682

DATE MAILED: 02/01/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Regards,

*Marsha D. Banks-Harold*

Marsha D. Banks-Harold  
(703) 305-4379

# Office Action Summary

Application No.

09/472,300

Applicant(s)

SHATTIL, STEVE J.

Examiner

Marsha D. Banks-Harold

Art Unit

2682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. **Claims 1-29** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 1-14** of U.S. Patent No. 6,008,760. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both drawn to the concept of frequency reuse based on co-channel interference.

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**Conclusion**

2. Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks  
Washington D.C. 20231

Or faxed to:

(703) 305-9051 (for formal communications intended for entry),

Or:

(703) 305-9508 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

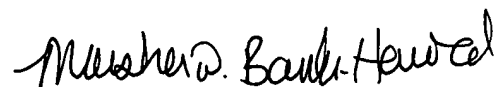
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the  
examiner should be directed to Marsha D. Banks-Harold whose telephone number is  
(703) 305-4379. The examiner can normally be reached on 6:30 a.m. - 5:00 p.m.,  
Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, Vivian Chang can be reached on (703) 308-6739. The fax phone numbers  
for the organization where this application or proceeding is assigned are (703) 308-6306  
for regular communications and (703) 308-6306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is (703) 305-  
4700.

Marsha D. Banks-Harold  
January 26, 2001

  
**MARSHA D. BANKS-HAROLD**  
**PRIMARY EXAMINER**